

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PHIL M. & ANTHONY M.,

Plaintiffs,

v.

CIGNA BEHAVIORAL HEALTH, INC., et
al.,

Defendants.

Case No. [18-cv-00901-MMC](#)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS; DISMISSING
SECOND AND THIRD CAUSES OF
ACTION WITHOUT FURTHER LEAVE
TO AMEND**

Re: Dkt. No. 42

Before the Court is defendant Lone Star Consulting Services, LLC dba MES Peer Review Services' ("MES") Motion to Dismiss, filed October 9, 2018. Plaintiffs Phil M. and Anthony M. have filed opposition, to which MES has replied. The matter came on regularly for hearing on November 9, 2018. Dennis J. Rhodes of Wilson, Elser, Moskowitz, Edelman & Dicker LLP appeared on behalf of MES. David M. Lilienstein and Katie J. Spielman of DL Law Group appeared on behalf of plaintiffs.

Having considered the parties' respective submissions and the arguments of counsel at the hearing, the Court finds, for the reasons stated on the record at the hearing, the Second and Third Causes of Action asserted against MES in plaintiffs' Second Amended Complaint "relate to [an] employee benefit plan" governed by ERISA and, consequently, are preempted under 29 U.S.C. § 1144(a).¹ See Wise v. Verizon Commc'ns Inc., 600 F.3d 1180, 1191 (9th Cir. 2010) (holding plaintiff's state law claims were preempted under § 1144(a) where claims were dependent on "the existence of an


¹ MES does not contend the Second and Third Causes of Action are completely preempted under 29 U.S.C. § 1132 (a)(1)(B).

1 ERISA plan” to “demonstrate that [plaintiff] suffered damages,” specifically “the loss of
2 insurance benefits”); cf. Dishman v. UNUM Life Ins. Co. of Am., 269 F.3d 974, 983 (9th
3 Cir. 2001) (holding plaintiff’s invasion of privacy claim was not preempted under
4 § 1144(a) where claim did “not depend on or derive from [plaintiff’s] claim for benefits in
5 any meaningful way,” as plaintiff’s “damages . . . remain[ed] whether or not [plan
6 administrator] ultimately pa[id] his claim”).

7 Accordingly, MES’s Motion to Dismiss is hereby GRANTED and the Second and
8 Third Causes of Action are hereby DISMISSED without further leave to amend.

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10 **IT IS SO ORDERED.**

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12 Dated: November 13, 2018

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MAXINE M. CHESNEY
United States District Judge